

REMARKS

The Office Action has been reviewed and reconsideration of the above-identified application in view of the following amendments and remarks, is respectfully requested

Claims 1-18 are pending and stand rejected.

Claims 1, 4, 7, 10, 13 and 16 are independent claims.

Claims 1, 4, 5, 7, 10, 13 and 16 have been amended.

Claims 1-18 stand rejected under 35 USC 112, second paragraph as being indefinite. Claims 1-18 stand rejected under 35 USC 103(a) as being unpatentable over Salmonsens (USP no. 7, 209, 874) in view of Sato (USPPA 2003/0041123) further in view of Pak (USPPA 2004/0267790) and further in view of Silen (USPPA 2002/0116518).

Applicant respectfully disagrees with and explicitly traverses the rejection of claims 1-18 under 35 USC 112, second paragraph.

In rejecting the claims the Office Action asserts that there is insufficient basis for the limitation of "reading pre-stored content regarding said downloaded content," as there is no prior indication of a downloading process.

However, claim 1, for example, recites "A method, operable in a processing system, for playing a downloaded content," and, thus, need not explicitly recite a prior step of downloading the content. Rather a step of downloading is performed after the pre-loaded content is submitted in a request message.

Thus, as the preamble of the claims refers to "a downloaded content," applicant submits that there is sufficient antecedent basis for the recited claims elements "the downloaded content" in each of the independent claims.

With regard to the rejection of claims 1-18 as being unpatentable over Salmonsens, Sato, Pak and Silen, applicant respectfully disagrees with and explicitly traverses the rejection of the claims.

However, in the interest of advancing the prosecution of this matter, applicant has amended each of the independent claims to refer to the pre-stored material including a quality menu and claims 1 and 10 to refer to a quality of downloading the downloaded content dependent upon the available bandwidth. No new matter has been added. Support for amendment to each of the independent claims may be found at least in part in claim 5 and support for the further amendment to claims 1 and 10 may be found at least on page 8, last line-page 9, line 2 ("Therefore, the network server can send the content required to the player according to the downloading requests, which has the quality suitable to the current bandwidth.").

Salmonsen is recited for teaching a method for playing downloaded content combined with pre-stored content. Sato is recited for teaching pre-stored content providing additional information regarding a content of said downloaded content (e.g., a disk ID). Pak is recited for sending a request for downloading the downloaded content wherein the request include the information of the bandwidth and receiving the downloaded content according with the detected bandwidth. Silen is recited for teaching detecting available bandwidth and downloading the requested content according to the bandwidth.

However, none of the references refer to the pre-loaded content including a quality menu or that a quality of the downloaded content is transmitted based on the available or detected bandwidth, as is recited in the claims. That is, a quality of the downloaded content is determined and the content is downloaded in conformance with the bandwidth and the quality may be adjusted according to the network connection to improve playing efficiency.

Although, the Office Action has pieced together references that teach elements recited in the claims, applicant further submits that the combination of the references is inappropriate as there is no motivation to combine the references as suggested. For example, Sato teaches a method of loading data onto a disk from a network wherein the disk includes an ID and a URL where the data may be obtained. However, Sato fails to provide any teaching that there is a

need to load this data onto a disk based on a quality or on an available bandwidth. No where does Sato consider the problem of downloading the product considering a quality, as is recited in the claims. Hence, the use of Sato is merely to show that pre-loaded content was known in the art. But Sato fails to consider the downloading based on the quality for example.

A claimed invention is *prima facie* obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations. However, the US Supreme Court in *KSR v. Teleflex* (citation omitted), held that the teaching, suggestion and motivation test (TSM) is merely to be used as a helpful hint in determining obviousness and a bright light application of such a test is adverse to those factors for determining obviousness enumerated in the *Graham v. John Deere* (i.e., the scope and content of the prior art, the level of ordinary skill in the art, the differences between the claimed invention and the prior art and objective indicia of non-obviousness).

In this case, the combination of the cited references fails to disclose at least one material element recited in each of the independent claims and thus, the combination of the cited references cannot be said to render obvious the subject matter recited in the independent claims.

With regard to the remaining claims, these claims depend from a corresponding one of the independent claims and, hence, are also allowable by virtue of their dependency upon an allowable base claim.

For the remarks made herein, applicant submits that the reasons for the objections and rejections of the claims have been overcome and withdrawal of

same is respectfully requested. The prompt issuance of a Notice of Allowance is expressly requested.

Applicant denies any statement, position or averment stated in the Office Action that is not specifically addressed by the foregoing. Any rejection and/or points of argument not addressed are moot in view of the presented arguments and no arguments are waived and none of the statements and/or assertions made in the Office Action is conceded.

Applicant makes no statement regarding the patentability of the subject matter recited in the claims prior to this Amendment and has amended the claims solely to facilitate expeditious prosecution of this patent application. Applicant respectfully reserves the right to pursue claims, including the subject matter encompassed by the originally filed claims, as presented prior to this Amendment, and any additional claims in one or more continuing applications during the pendency of the instant application.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at the telephone given below.

No fees are believed necessary for the timely filing of this paper.

Respectfully submitted,
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